

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re THE LEGACY ESTATE GROUP,  
LLC,

Debtor.

OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS,

Plaintiff,

v.

JOHN M. BRYAN, JOHN M. AND  
FLORENCE E. BRYAN TRUST, J.M.  
BRYAN FAMILY TRUST, KULWINDER  
SIDHU, DEVINDER SIDHU, PACIFIC  
PARAGON INVESTMENT FUND LTD, a  
British Columbia company, HARRY CHEW,  
and AIC CAPITAL PARTNERS, LLC, a  
California limited liability company,

Defendants,

JOHN M. BRYAN, JOHN M. AND  
FLORENCE BRYAN TRUST, J.M.  
BRYAN FAMILY TRUST,

Defendants/Cross-Claimants,

KULWINDER SIDHU, DEVINDER SIDHU,  
PACIFIC PARAGON INVESTMENT FUND  
LTD, a British Columbia company, HARRY  
CHEW, AIC CAPITAL PARTNERS, LLC, a  
California limited liability company, and  
LAMINAR DIRECT CAPITAL, L.P., a  
Texas limited partnership,

Defendants/Cross-Defendants.

No. C 07-2943 PJH  
Bankr. Case No. 05-14659 AJ  
Adv. Case No. 06-1173 AJ

**ORDER DENYING RENEWED  
MOTION TO WITHDRAW  
REFERENCE; DENYING  
REQUEST FOR STAY**

1 Currently before the court is defendant John M. and Florence E. Bryan Trust's ("JFB  
2 trust" or "JFB") renewed motion for withdrawal of the bankruptcy court's reference and to  
3 stay the November 13, 2007 trial before the bankruptcy court. For the reasons that follow,  
4 the court DENIES both motions.

### 5 BACKGROUND

6 Plaintiff, the official committee of unsecured creditors ("committee") in the Chapter  
7 11 debtor Legacy Estate Group, LLC's bankruptcy case, 05-14659 AJ, filed an adversary  
8 proceeding, 06-1173 AJ, against a number of defendants/creditors, including John M.  
9 Bryan ("Bryan"), JFB trust, and J.M. Bryan Family trust ("JMB trust"), to recover estate  
10 property and damages. The first amended complaint ("FAC") includes twenty claims, most  
11 of which seek relief under the Bankruptcy Code, but a few which seek relief under state law  
12 as well.

13 On February 10, 2007, Bryan, JMB trust, and JFB trust, filed before the bankruptcy  
14 court an ex parte motion to certify the proceeding for trial by jury before the district court (in  
15 addition to a motion to shorten time for hearing on the certification motion) under B.L.R.  
16 9015-2.<sup>1</sup> The bankruptcy court appears to have denied the motion for shortened time and  
17 also to have required defendants to file a noticed motion for certification, which they did on  
18 February 16, 2007. The bankruptcy court heard the motion on March 14, 2007, and on  
19 March 28, 2007, issued an order denying the motion with prejudice as to Bryan and JMB  
20 trust, finding that they had waived their right to a jury trial by filing proofs of claim in the  
21 Chapter 11 case. As for JFB trust, the court noted that it had not filed a claim in its own

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23 <sup>1</sup>B.L.R. 9015-2 provides in pertinent part:

24 **(a) Determination of Right.** In any proceeding in which a demand for  
25 jury trial is made, the Bankruptcy Judge shall, upon the motion of one of the  
26 parties, or upon the Bankruptcy Judge's own motion, determine whether the  
27 demand was timely made and whether the demanding party has a right to a jury  
28 trial. The Bankruptcy Judge may, on the Judge's own motion, determine that  
there is no right to a jury trial in a proceeding even if all of the parties have  
consented to a jury trial.

1 name. It stated, however, that “it appears that [JFB’s trust’s] alter ego may have filed a  
2 proof of claim or that [JFB trust] is close enough in identity to be bound by the jury waiver of  
3 other entities,” and that “[r]esolution of this matter requires an evidentiary hearing and  
4 further briefing.”

5 The bankruptcy court, however, was unable to resolve the issue before defendants  
6 Bryan, JMB trust, and JFB trust, on May 24, 2007, filed a motion to withdraw the  
7 bankruptcy court’s reference pursuant to 28 U.S.C. § 157(d) and Federal Rule of  
8 Bankruptcy Procedure (“FRBP”) 5011, in what appears to be an attempt to curtail the  
9 proceedings in the bankruptcy court. On June 6, 2007, the bankruptcy court clerk  
10 transmitted the motion to this court pursuant to B.L.R. 5011. Subsequently, on June 29,  
11 2007, the bankruptcy court submitted to this court a report and recommendation, in which  
12 the bankruptcy court recommended that this court deny the motion to withdraw the  
13 reference. It noted that JFB had not filed a proof of claim, and that the issue was still  
14 pending before the bankruptcy court as to whether JFB was bound by the proofs of claim  
15 filed by Bryan and the JMB trust. The bankruptcy judge also suggested that defendants  
16 may have filed the motion to withdraw for “improper purposes, including a desire to delay  
17 litigation or make it more expensive for a bankruptcy estate with limited assets to  
18 prosecute” or “in an attempt to forum shop when the moving party becomes unhappy with  
19 bankruptcy court rulings.” Following that recommendation, the parties briefed the motion  
20 before this court.

21 On August 9, 2007, this court stayed the instant case, noting that defendants  
22 appeared to have filed the motion to withdraw the reference prematurely (and perhaps to  
23 thwart the bankruptcy court proceedings). The court noted that a determination as to JFB  
24 trust’s jury trial rights was central to this court’s resolution of the motion to withdraw the  
25 reference. This court further noted that the bankruptcy court retained jurisdiction to  
26 continue with the evidentiary hearing in spite of the filing of the motion to withdraw, and  
27 stayed this case until the evidentiary hearing and related bankruptcy court proceedings  
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1 were complete.

2 On September 27, 2007, the bankruptcy court held an evidentiary hearing on JFB's  
3 jury trial right. In a September 28, 2007 memorandum decision, the bankruptcy court found  
4 that JFB trust was an alter ego of Bryan because it is a fully revocable estate planning  
5 device containing all of Bryan's assets, over which Bryan had complete control and could  
6 revoke at any time. In a subsequent October 1, 2007 order, the bankruptcy court denied  
7 with prejudice JFB trust's B.L.R. 9015-2 motion to certify the case to the district court for  
8 jury trial, and struck JFB's demand for jury trial.

9 JFB *did not* appeal to this court or to the Ninth Circuit Bankruptcy Appellate Panel  
10 ("BAP") the bankruptcy court's October 1, 2007 order striking its request for a jury trial and  
11 denying its motion for certification to the district court based on its alleged right to a jury  
12 trial. (Nor did Bryan and/or JMB previously appeal the bankruptcy court's March 28, 2007  
13 order striking their jury trial rights.) Presumably, that is because a bankruptcy court order  
14 denying a jury trial right constitutes an interlocutory order that is not final for purposes of  
15 appeal. See *City of Morgantown v. Royal Ins. Co.*, 337 U.S. 254, 258 (1949) (a ruling  
16 denying a demand for jury trial is an interlocutory order and is not "within the class of  
17 appealable decisions"); *In re Hooker Invs.*, 937 F.2d 833, 837 (2d Cir. 1991) (an order with  
18 the collateral effect of eliminating a right to a jury trial is not final); *Germain v. Connecticut*  
19 *National Bank*, 930 F.2d 1038, 1040 (2d Cir. 1991); see also Wright & Miller, 15B Fed.  
20 Prac. & Proc. Juris.2d, § 3914.15, Finality (2007 Suppl.). Such an order cannot be  
21 appealed until after final judgment.

22 Instead, on October 15, 2007, JFB *only* (Bryan and JMB trust did not join in the  
23 instant motion) filed a renewed motion to withdraw the bankruptcy court's reference. In the  
24 renewed motion to withdraw, JFB also seeks an order from this court staying the November  
25 13, 2007 trial before the bankruptcy court, arguing that it indeed possesses a jury trial right.

**DISCUSSION**

There are several problems with JFB's renewed motion. First, the bankruptcy court *did not* rule on its motion to withdraw the reference. It left that decision to this court. The bankruptcy court did, however, deny JFB's motion for certification, which was properly before it, based on JFB's absence of a jury trial right.

Second, JFB suggests that this court should review the bankruptcy court's findings of facts and conclusions of law regarding JFB's alter ego status and its entitlement to a jury trial *de novo*. This, however, is not required in the context of the instant motion to withdraw the reference; nor is it required by the Ninth Circuit's recent decision in *In re Healthcentral.com*. See 2007 WL 2743497 (9th Cir. 2007).

Again, the jury trial issue is *not* before this court on *appeal* of the bankruptcy court's determination that JFB is not entitled to a jury trial. That is because, as noted above, JFB is not entitled to appeal that ruling at this stage. If this indeed were an *appeal* of the bankruptcy court's denial of defendants' motion for certification of its jury trial rights, this court would review the bankruptcy court's conclusions of law regarding JFB's entitlement to a jury trial *de novo*, and its related findings of fact for clear error. See *Scheiber v. Hooper* (*In re Hooper*), 112 B.R. 1009, 1011 (9th Cir. BAP 1990); *Smith v. Internal Revenue Service* (*In re Smith*), 205 B.R. 226, 228 (9th Cir. BAP 1997). However, such an appeal is *not* and *cannot* be what is before this court right now. Nevertheless, JFB seeks to have its motion to withdraw treated as such.

Nor did this court improperly delegate its ultimate decision on the motion to withdraw to the bankruptcy court. Plaintiffs are correct that this case *did not* come before this court pursuant to B.L.R. 9015-2(b), at issue in the *HealthCentral.com* case.<sup>2</sup> See 2007 WL 2743497 at \*7 (finding B.L.R. 9015-2(b) invalid because it allows for the bankruptcy court to

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<sup>2</sup>Under the version of Rule 9015-2(b) considered by the Ninth Circuit in *Healthcentral.com*, the bankruptcy court could certify that a party had a right to a jury trial, and the reference would be immediately withdrawn and the case assigned to a district judge. However, this case couldn't have come before this court under that rule because the bankruptcy court did *not* find here that defendants had a jury trial right.

1 automatically withdraw the jurisdictional reference upon concluding a party has a right to  
2 jury trial). Instead, this case is before this court under B.L.R. 5011-2 on JFB's motion to  
3 withdraw the reference.<sup>3</sup>

4 The Ninth Circuit's recent decision in *Healthcentral.com* does *not* require that the  
5 district court make all of the relevant findings of fact and conclusions of law as to whether  
6 JFB possesses a right to a jury trial in conjunction with its motion to withdraw the reference.  
7 See *id.* at 9 (allowing bankruptcy court to retain jurisdiction following its determination that  
8 there is a jury trial right, and even rule on dispositive motions, because such rulings "would  
9 not affect a party's Seventh Amendment *right* to a jury trial, as these motions merely  
10 address whether trial is necessary at all"). Instead, *Healthcentral.com* simply requires that  
11 this court make the ultimate determination as to whether JFB's motion to withdraw the  
12 reference should be granted. *Id.* at 7 ("28 U.S.C. § 157(d) and Rule 5011(a) make it  
13 explicit that only a district court may 'withdraw' the jurisdictional reference").

14 The bottom line is that JFB seeks this court's review of issues for which it is not yet  
15 entitled to review. JFB will be able to appeal the bankruptcy court's findings of facts and  
16 conclusions of law regarding its right to a jury trial at the same time that it appeals (if  
17 necessary) the bankruptcy court's ruling following the trial. See *City of Morgantown*, 337  
18 U.S. at 258 (1949); *In re Hooker Invs.*, 937 F.2d at 837; *Germain*, 930 F.2d at 1040; see  
19 also Wright & Miller, 15B Fed. Prac. & Proc. Juris.2d, § 3914.15, Finality (2007 Suppl.). If,  
20 on appeal, the bankruptcy court's decision on the jury trial issue is reversed, then it is at  
21 that time - assuming that the bankruptcy court was incorrect that JFB had waived its jury  
22 trial right - that the reviewing court may determine what, if any, preclusive effect the  
23 bankruptcy court's post-trial findings may have on a subsequent jury trial, in light of the

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25 <sup>3</sup>B.L.R. 5011-2(a) regarding withdrawal of reference, provides:

26 **(a) Procedure.** A motion to withdraw a case or proceeding under 28 U.S.C. §  
27 157(d) shall be filed with the Clerk of the Bankruptcy Court. The Clerk of the  
28 Bankruptcy Court shall transmit the motion forthwith to the District Court. The  
motion shall be assigned by the Clerk of the District Court to a Judge of the  
District Court pursuant to the Assignment Plan.

1 cases cited by JFB in its instant motion papers. See, e.g., *Comer v. Micor, Inc.*, 436 F.3d  
2 1098, 1101 (9th Cir. 2006); *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500 (1959); *Dairy*  
3 *Queen, Inc. v. Wood*, 369 U.S. 469 (1962).

4 In resolving the motion that *is* before this court, the court considers the pertinent  
5 legal standards governing motions to withdraw the reference, in light of the bankruptcy  
6 court's determination that JFB does not possess a jury trial right. Section 157(d) provides  
7 that "[t]he district court may withdraw, in whole or in part, any case or proceeding referred  
8 under this section, on its own motion or on timely motion of any party, for cause shown."  
9 The Ninth Circuit has held that the district court must articulate its reasons for withdrawing  
10 the bankruptcy court's reference. See *In re Canter*, 299 F.3d 1150, 1154 (9th Cir. 2002).  
11 Among the factors that the district court should consider are "the efficient use of judicial  
12 resources, delay and costs to the parties, uniformity of bankruptcy administration, the  
13 prevention of forum shopping, and other related factors." *In re Security Farms*, 124 F.3d  
14 999, 1008 (9th Cir. 1997). Among the "other related factors" is the presence or absence of  
15 a jury request. See *id.*

16 JFB's sole argument for cause to withdraw the reference is that it possesses a  
17 Seventh Amendment right to jury trial. However, given that the bankruptcy court has  
18 determined that there is no such right, and upon consideration of the other relevant factors,  
19 the court concludes that the reference should not be withdrawn. The bankruptcy court is  
20 very familiar with the underlying facts and arguments in the adversary case. Additionally,  
21 as mentioned above, JFB's actions suggest that it has been motivated by forum shopping.  
22 Finally, because the adversary proceeding is based primarily on claims for relief brought  
23 under the Bankruptcy Code, the bankruptcy court is in the best position to ensure the  
24 uniformity of bankruptcy administration.

### 25 CONCLUSION

26 For all of the above reasons, the court DENIES JFB's renewed motion for withdrawal  
27 of reference and its related motion to stay the November 13, 2007 trial before the  
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1 bankruptcy court.

2 This order fully adjudicates the motions listed at Nos. 17 and 20 of the clerk's docket  
3 for this case and terminates all other pending motions. The clerk shall close the file.

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5 **IT IS SO ORDERED.**

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7 Dated: October 26, 2007



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PHYLLIS J. HAMILTON  
United States District Judge